Supreme Court, U.S.
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No. 03-72

IN THE

Supreme Court of the United States

GARY G. SHARPE, *et al.*,

Petitioners,

v.

BRUCE CURETON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

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I. Respondents' Brief in Opposition further illuminates the fundamental problem in this case: Respondents refuse to recognize or respect the jury's unappealed finding that Respondents' conduct violated the fundamental rights of Knoxville Firefighters to exercise political freedom.[1]

Respondents rely upon *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir. 1998) to argue that Petitioners failed to demonstrate "1) a continuing irreparable injury if the court fails to issue the injunction, and 2) the lack of an adequate remedy at law." Brief in Opposition at p. 5. While complaining vociferously about Petitioners' *Appendices E and F* (Order of the Knox County Chancery Court upholding the Civil Service Merit Board's finding of continued political retaliation against yet another firefighter), Respondents blindly contend that there was no showing of a likelihood of continuing irreparable injury.

As to the first element, clearly there can be no doubt that injury to political freedom is irreparable, as this Court so held in *Elrod v. Burns*, 427 U.S. 347 (1967) and its progeny. Petitioners not only showed a continuing likelihood of irreparable injury, but actually demonstrated continuing political retaliation in the orders attached to the Motion to Consider Post-judgment Facts. Retaliation continued not only during the trial of this cause, but long after. *See Appendices E and F*. As to the second element, there can surely be no question that the loss of political freedom cannot be remedied adequately in money damages.

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1. Respondents attempts to discredit by adjectives rather than analysis demonstrates their fundamental unwillingness to appreciate the significance of the issues involved herein.

Respondents' suggestion that the injunction should be denied because the Mayor is term-limited fails to recognize the reality of the effect of decades of unfettered political retaliation. This Mayor can run again after sitting out only one term. When political retaliation has become "business as usual," it is easily passed from one figurehead to the next. Any showing by this Mayor of alignment with a candidate will be read by those who have learned to survive by sublimating their beliefs as a clear command for future loyalty. The shadow reaches far beyond the current term, particularly if the average employee believes the courts to be unwilling or unable to effectively redress ongoing political retribution. If this Mayor goes unrebuked, all those who work closely with him and remain after he leaves office will likely believe his methods of doing business to be acceptable, just as those assuming his office hereafter will likely also believe themselves free to continue "politics as usual."

II. If Rule 68 is to be read as liberally as the Sixth Circuit has done, then combined with this Court's decision in *Marek v. Chesny*, 473 U.S. 1 (1985) that Rule of Civil Procedure will effectively swallow the public policy and congressional intent expressed in 42 U.S.C. § 1988.

Petitioners respectfully submit that *Marek* was never intended to be read so broadly, nor was Rule 68 intended to apply to a clearly meritorious case that by its nature is not amenable to monetary valuation. To suggest that the most fundamental of constitutional rights can be measured in dollars and cents is to miscomprehend the importance of those rights. Allowing ambiguous and non-specific Rule 68 offers to undercut access to the courts for victims of political retaliation devalues the fundamental rights and the principles critical to governance in a free society.

III. This case squarely presents the question reserved in *National Railroad Passenger Corp. v. Morgan*, 122 S. Ct. 2061 (2002).

In cases of systemic impact, where special courage is needed for individuals to fight an apparently accepted manner of doing business, special consideration should be given. In this case, the only reason Petitioners were returned to their original stations was as a part of a failed settlement. The retaliation, however, continued for years after the transfers and long after the lawsuit was filed. The jury found an overarching scheme of retaliation and political oppression. The simple question for this Court is whether the continuing violations doctrine applies in the most egregious circumstances: systemic cases where an overarching scheme is shown. This issue is particularly poignant where, as here, the shortest statute of limitations (one year) otherwise applies.

CONCLUSION

WHEREFORE, Petitioners respectfully request that this Court grant *Certiorari* to address these important matters.

Respectfully submitted,

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